

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75255 of 2025

(Arising out of Order-in-Appeal No. Kol/Cus(CCP)/KS/579/2024 dated 08.10.2024 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Bharat Udyog,

S J Road, Athgaon, Kamrup Metropolitan,
Guwahati, Assam,-781001.

: Appellant

VERSUS

Commissioner of Customs (Preventive), WB

Custom House, 15/1, Strand Road, Kolkata-700001

: Respondent

APPEARANCE:

Shri S. K. Mohapatra, Advocate
Shri Arijit Goswami, Advocate for the Appellant

Shri F. Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77772/2025

DATE OF HEARING / DECISION: 20.11.2025

Order: [PER SHRI K. ANPAZHAKAN]

The instant appeal has been filed against the Order-in-Appeal No. KOL/CUS/(CCP)/KS/579/2024 dated 08.10.2024 [hereinafter referred to as the "the impugned order"], passed by the Commissioner of Customs (Appeals), Kolkata, whereby the Ld. Commissioner (Appeals) has upheld the demands confirmed in the Order-in-Original No. 32/AC/CUS/DH-DIVN/23-24 dated 24.03.2024 passed by the Assistant Commissioner of Customs (CCP), Dinhata Customs Division. In the Order-in-Original, a demand of duty of Rs. 4,27,563/-, has been confirmed on account of short-paid IGST on Freight

Charge, Insurance Charge and Landing Charge in terms of Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA *ibid*. A penalty of Rs. 4,27,563/- was also imposed on the Appellant under Section 114A of the Customs Act, 1962. The impugned order has upheld these demands. Aggrieved against upholding of these demands, the Appellant has filed this appeal.

2. The Appellant submits that the SCN was issued to them under Section 28(4) of the Customs Act alleging suppression of facts and misstatement in respect of 27 Bills of Entry covering import of Bhutan Particle Board wherein short levy was alleged because of purported non-inclusion of freight and insurance component in those 27 Bills of Entry and non-inclusion of landing cost in respect of 3 Bills of Entry.

2.1. In this regard, the Appellant submits that there was no suppression of facts/misstatement on their part as all the imports from Bhutan were in FOR terms wherein the invoice prices were inclusive of transportation, insurance, loading and forwarding charges. Certificate in this regard was also produced from TCI Freight, Jaigaon wherein the transporter has stated that they have an agreement with the Bhutan Board Exports Ltd. and as such they did not charge the Appellant any freight transportation and/or insurance charges.

2.2. The Appellant further submits that vide a common letter dated 30.04.2024, the Bhutan Board Products Ltd. addressed to the Assistant Commissioner of Customs, Dinhata Customs Division, clarified the above position *inter alia* stating

that prices charged to the Appellant are all inclusive of the cost incurred.

2.3. In the "Distributorship Agreement- Export Market" made on the 1st January, 2018 between the Bhutan Board Exports Limited (BBEL) and the Appellant, it is specifically mentioned in Article 02 paragraph (a) that the price of products shall be the agreed price fixed by the company from time to time, net of commissions and discounts, the price of the products includes both transportation and insurance cost up to the buyer's destination and as such the value declared in the subject Bills of Entry as well as in the invoice was on CIF terms. Similar Agreements existed prior to 01.01.2018 also.

2.4. The Appellant submits that the same Commissioner (Appeals) in an appeal of another similarly placed importer has considered and accepted such "Agreement" and held that there was no short levy of Customs duty as the invoices were on CIF terms. In support of this claim, the Appellant submitted a Photocopy of the said Agreement dated 01.01.2018 and the Order-in-Appeal No. KOL/CUS/CCP/ KS/513/2024 dated 02.09.2024. However, in the case of the Appellant the Commissioner (Appeals) has taken a different view which is arbitrary and illegal and liable to be set aside.

2.5. Since the prices reflected in the impugned invoices were inclusive of freight transportation and/or insurance charges, there is absolutely no suppression and/or misstatement by the Appellant in this case. Accordingly, the Appellant submits that the confirmation of duty along with interest and

imposition of penalty are not sustainable and prayed for setting aside the same.

3. The Ld. A.R. reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe the issue involved in this appeal is related to non-inclusion of freight and insurance component in respect of 27 Bills of Entry and non-inclusion of landing cost in respect of 3 Bills of Entry. We have perused the "Distributorship Agreement-Export Market" made on the 1st January, 2018 between the Bhutan Board Exports Limited (BBEL) and the Appellant. It is specifically mentioned in Article 02 paragraph (a) that the price of products shall be the agreed price fixed by the company from time to time, net of commissions and discounts, the price of the products includes both transportation and insurance cost up to the buyer's destination and as such the value declared in the subject Bills of Entry as well as in the invoice was on CIF terms. Similar Agreements existed prior to 01.01.2018 also.

5.1. We also find that all the imports by the Appellant from Bhutan were in FOR terms wherein the invoice prices were inclusive of transportation, insurance, loading and forwarding charges. Certificate in this regard was also produced from TCI Freight, Jaigaon wherein the transporter has stated that they have an agreement with the Bhutan Board Exports Ltd. and as such they did not charge the Appellant any freight transportation and/or insurance charges. The Appellant also submitted a letter dated 30.04.2024, of the Bhutan Board Products Ltd.

addressed to the Assistant Commissioner of Customs, Dinhata Customs Division, wherein it has been clarified that prices charged to the Appellant are all inclusive of the cost incurred. Thus, we do not find any merit in the allegation that the appellant has not included the freight and insurance and landing cost in the assessable value.

5.2. We also take note of the fact that the same Commissioner (Appeals) in an appeal of another similarly placed importer has considered and accepted such "Agreement" and held that there was no short levy of Customs duty as the invoices were on CIF terms. In support of this claim, the Appellant submitted a Photocopy of the said Agreement dated 01.01.2018 and the Order-in-Appeal No. KOL/CUS/CCP/ KS/513/2024 dated 02.09.2024.

5.3. In view of the above findings, we hold that the demand of duty confirmed, along with interest in the impugned order is not sustainable and hence we set aside the same.

5.4. We also find that there is no suppression of facts/misstatement on the part of the Appellant as all the imports from Bhutan were in FOR terms wherein the invoice prices were inclusive of transportation, insurance, loading and forwarding charges. In support of this claim, the Appellant has produced Certificate from TCI Freight, Jaigaon wherein the transporter stated that they have an agreement with the Bhutan Board Exports Ltd. and as such they did not charge the Appellant any freight transportation and/or insurance charges. Thus, we hold that the allegation of suppression is not established and hence no penalty imposable on the Appellant.

Accordingly, we set aside the penalty imposed on the Appellant in the impugned order.

6. In the result, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp